



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 19, 1996

Ms. Y. Qiyamah Taylor
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR96-0353

Dear Ms. Taylor:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 38714.

The City of Houston received a request for the following information:

[D]ocuments that pertain to the contract that the City maintains with Lockheed Datacom for the billing and collection of the City's fire department ambulance service fees:

1. Executed copy of the contract (approx. 6/88) plus and renewal contracts.
2. A copy of the City's instrument used to execute the contract (a City Ordinance or minutes by which the City Council voted).
3. A copy of the original request for proposal or bid document that was originally published by the City.
4. A copy of the winning proposers proposal.

The city makes no argument that the requested information is excepted from required public disclosure, but notified a third party, Lockheed Martin IMS ("Lockheed"), whose proprietary rights may be implicated by the release of some of the requested information. This office also notified Lockheed of this request for information.

Lockheed asserts that certain pages of the proposal it submitted in response to the city's RFP 7796/021593/250 are excepted from required public disclosure as trade secrets. Lockheed also asserts that portions of its proposal are excepted from required public disclosure because the release of the information would be an invasion of privacy.

Section 552.110 of the Government Code excepts a trade secret from required public disclosure. The Texas Supreme Court has adopted the definition of trade secret from section 757 of the Restatement of Torts. *Hyde Corp. v. Huffines*, 314 S.W.2d 763m 776 (Tex.), *cert. denied*, 358 U.S. 898 (1958); *see also* Open Records Decision No. 552 (1990) at 2. Section 757 provides that a trade secret is

any formula, pattern, device, or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business . . . in that it is not simply information as to single or ephemeral events in the conduct of the business, . . . [but] a process or device for continuous use in the operation of the business . . . [It may] relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

Restatement of Torts § 757, cmt. b (1939). The Restatement also lists the following six factors to be considered in determining whether particular information constitutes a trade secret:

- 1) the extent to which the information is known outside of [the company's] business;
- 2) the extent to which it is known by employees and others involved in [the company's] business;
- 3) the extent of measures taken by [the company] to guard the secrecy of the information;
- 4) the value of the information to [the company] and to [its] competitors;
- 5) the amount of effort or money expended by [the company] in developing this information;

6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

Restatement of Torts § 757, cmt. b (1939).

This office has held that if a governmental body takes no position with regard to the application of the trade secret branch of section 552.110 to requested information, we must accept a private person's claim for exception as valid under that branch if that person establishes a prima facie case for exception and no argument is submitted that rebuts the claim as a matter of law. Open Records Decision No. 552 (1990) at 5-6.

Lockheed argues that portions of its proposal that pertain to "data center capabilities should be treated as Trade Secret because the assembly of both hardware and software listed in the section noted above has been compiled over a period of years based on our expertise and experience. This information is closely held within the company, and not a subject of general knowledge."

We do not believe Lockheed has established that the information is a trade secret. In our opinion Lockheed has not adequately addressed the Restatement's trade secret factors. Accordingly, the city may not withhold the requested information from required public disclosure based on section 552.110 as a trade secret.

Section 552.101 excepts from required public disclosure information considered to be confidential by law, including information made confidential by judicial decision. This exception applies to information made confidential by the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld under section 552.101 in conjunction with the common-law right to privacy if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *See id.*

The information Lockheed argues is private information consists of information about the qualifications and experience of the Lockheed personnel who will assist in providing the services requested in the RFP. We do not believe such information is "highly intimate or embarrassing." Consequently, the city may not withhold the information from required public disclosure based on section 552.101 of the Government Code.

Neither the city nor Lockheed objects to the release of the remaining requested information. We conclude the city must release the requested information in its entirety.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/ch

Ref.: ID# 38714

Enclosures: Submitted documents

cc: Mr. Scott Long
Vice President Contract Services
Southwest General Services
P.O. Box 1486
Mesa, Arizona 85211-1486
(w/o enclosures)